IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]
Description of case

Criminal Appeal No. 1276 of 2001 Decided on: July 11, 2006
WITH

Criminal Appeal No. 313-A of 2001
AND
Criminal Revision No. 450 of 2001

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 11.07.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1276 of 2001
(Old No. 1046 of 1987)

Bal Kishan
S/o Lachhi Ram
R/o Gunia Lekh, Patti Sarna,
P.S. Padampur,
District Nainital.

……. Appellant

Versus

The State …… Respondent

Mr. Kurban Ali, Advocate on behalf of Mr. M.C. Kandpal, Senior Counsel for the appellant.
Mr. D.K. Sharma, Government Advocate for the respondent – State.

WITH

Criminal Appeal No. 313-A of 2001
(Old No. 1318 of 1986)

1. Lila Dhar S/o Dharam Ram
   R/o Village Sarana (Patti Sarana)
   District Nainital.
2. Kundan Lal S/o late Kishori Lal,
   R/o Mohalla Vishnupuri,
   P.S. Haldwani, District Nainital.

……..

Appellants

Versus

The State …… Respondent

Mr. Kurban Ali, Advocate on behalf of Mr. M.C. Kandpal, Senior Counsel for the appellant.
Mr. D.K. Sharma, Government Advocate for the respondent – State.

AND

Criminal Revision (Against Acquittal) No. 450 / 2001
(Old No. 1208 of 1986)

Dharam Pal S/o late Seth Vir Ram,
R/o Village Sarana, P.S. Bhowali,
District Nainital. …… Applicant

Versus

1. Bal Kishan S/o Uttam Ram
2. Mohan Ram S/o Mani Ram
3. Khem Ram S/o Bhawani Ram
4. Gopal Ram S/o Bhaun Ram @ Bhawani Ram
5. Keshar
6. Bhaun Ram S/o Mani Ram
7. Santosh

All R/o Village Sarana, P.S. Bhowali,
District Nainital.

8. The State. …….. Respondents

None for the revisionist.
Mr. M.C. Pande, Advocate for respondent Nos. 1, 2, 3, 4 & 6.
None for respondent Nos. 5 and 7.
Mr. D.K. Sharma, Government Advocate for respondent No. 8.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dt: July 11, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

The above mentioned Criminal Appeals and Criminal Revision have arisen out of the same judgment and order, passed by the trial court, as such, all the three are being disposed of by this common judgment.

2) Criminal Appeal No. 1276 of 2001 (old No. 1046 of 1987), preferred under Section 374(2) of the Code of

Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 06.05.1986, passed in Sessions Trial No. 227 of 1984, whereby the then learned II Additional Sessions Judge, Nainital, has convicted accused / appellant Bal Kishan (S/o Lachhi Ram) under Section 396 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and sentenced him to undergo imprisonment for life. Criminal Appeal No. 313-A of 2001 (old No. 1318 of 1986), preferred by accused/ appellants Lila Dhar and Kundan Lal, is also directed against the same judgment and order dated 06.05.1986, passed in Sessions Trial No. 227 of 1984, by the same Court, whereby both of them are also convicted under Section 396 of the I.P.C. and each one of them is sentenced to imprisonment for life. Criminal Revision No. 450 of 2001 (old No. 1208 of 1986), is preferred by the complainant against the same judgment and order dated 06.05.1986, passed in Sessions Trial No. 227 of 1984, by the same court, whereby accused/respondents, namely Bal Kishan (S/o Uttam Ram), Mohan Ram, Khem Ram, Gopal Ram, Keshar Singh and Bhaun Ram have been acquitted of the charge of offence punishable under Section 396 of I.P.C., whereas accused / respondent Santosh has been acquitted of the charge of offence punishable under Section 412 of I.P.C.

3) We heard learned counsel for the parties and perused the entire record.

4) Prosecution story, in brief, is that on 08.08.1984, at about 9:00 P.M. accused / appellants Lila Dhar, Kundan

Lal and Bal Kishan (S/o Lachhi Ram) along with some 7-8 persons entered in the house of Beer Ram (deceased) resident of village Sarana, and committed dacoity. They looted valuable articles including jewellery worth Rs. 25,000/- from the house of Beer Ram (deceased). While committing dacoity the miscreants killed Beer Ram and caused injuries on the person of Smt. Reoli Devi (P.W. 1), sister of the deceased, and Smt. Basanti Devi (P.W. 2), wife of the deceased. P.W. 3, Murlidhar, a minor son of the deceased, is also eyewitness of the crime. P.W. 4, Dharam Pal, another son of the deceased, lodged the First Information Report (Ext. A – 1) on 09.08.1984, at about 5:30 A.M., with Patti Patwari Sarana (In Uttaranchal hills, in rural areas, Revenue Officers are given police powers by the State). P.W. 12, Bhawan Singh Jeena, Patwari, Patti Sarana, on the basis of the First Information Report prepared its check report (Ext. A –13) and made necessary entry in the general dairy, extract of which is Ext. A – 14. Accused / appellants Lila Dhar, Kundan Lal and Bal Kishan (S/o Lachhi Ram), been known to the witnesses, are named in the First Information Report, while the other miscreants are not named in it. P.W. 12, Bhawan Singh Jeena, Patwari initially investigated the crime. He went to the spot and took the dead body of Beer Ram in his possession and prepared the inquest report (Ext. A – 8). He further prepared sketch of the dead body (Ext. A – 15), police form No. 13 (Ext. A – 16) and letter (Ext. A –17) to the Chief Medical Superintendent, requesting for postmortem examination of the dead body. P.W. 12, Bhawan Singh Jeena, Patwari also prepared site plan (Ext.

A –18). Postmortem examination of the dead body was conducted by P.W. 6, Dr. S.P. Awasthi on 10.08.1984, who opined that the Beer Ram had died due to shock and haemorrhage because of firearm injury on the vital organs – heart, lung and liver. Further investigation of the crime was transferred under orders of the Senior Superintendent of Police to Station House Officer, police station Bhowali on 25.08.1984, who recorded the statements of remaining witnesses and recovered (Ext. 1), a Silver necklace (HANSULI / SUTA) from the house of Santosh and prepared memo Ext. A –6. P.W. 10, Laxmi Ram Arya, Station House Officer, police station Bhowali further recovered gun (Ext. 2) from the house of Keshar Singh and prepared memo Ext. A –7. On completion of the investigation, P.W. 10, Laxmi Ram Arya (Investigating Officer) submitted charge sheet (Ext. A –12) in the court against accused persons namely, Lila Dhar, Kundan Lal and Bal Kishan, S/o Lachhi Ram, (all the three present appellants), and seven others namely, Bal Kishan (S/o Uttam Ram), Mohan Ram, Khem Ram, Gopal Ram, Santosh, Keshar Singh and Baun Ram.

5) The Magistrate concerned, on receipt of the charge sheet, registered the same and, after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions for trial. Learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 396 of I.P.C. against accused Lila Dhar, Kundan Lal, Bal Kishan (S/o Lachhi Ram), Bal

Kishan (S/o Uttam Ram), Mohan Ram, Khem Ram, Gopal Ram, Bhaun Ram and Keshar Singh. The trial court further framed separate charge against accused Santosh of the offence punishable under Section 412 of I.P.C. All the accused persons pleaded not guilty and claimed to be tried.

6) On this, the prosecution got examined P.W. 1, Smt. Reoli Devi, an injured eyewitness and sister of the deceased; P.W. 2, Smt. Basanti Devi, another injured eyewitness and wife of the deceased; P.W. 3, Murlidhar, third eyewitness and minor son of the deceased; P.W. 4, Dharam Pal, informant and son of the deceased; P.W. 5, Dr. Navin Jha, who got examined and recorded the injuries found on the person of Smt. Reoli Devi (P.W. 1) and Smt. Basanti Devi (P.W. 2); P.W. 6, Dr. S.P. Awasthi, who conducted the postmortem examination on the dead body of the deceased; P.W. 7, Ramesh Chandra Pathak, Sub Divisional Magistrate, who prepared the report regarding the test identification of allegedly recovered property; P.W. 8, Dharma Nand Sharma, Block Pramukh of Block Dhari, witness in the test identification of property and also witness in the recovery of gun; P.W. 9, Himmat Singh, Pradhan of village Sarana, witness of preparation of inquest report (Ext. A –8); P.W. 10, Laxmi Ram Arya, Investigating Officer; P.W. 11, Trilochan Sanwal, Peon, who took the dead body for postmortem examination and P.W. 12, Bhawan Singh Jeena, Patwari, Patti Sarana, who prepared the check report (Ext. A –13). The entire oral and documentary evidence was put to the accused persons under Section 313 of Cr.P.C. regarding which in their reply, the accused persons alleged that they have been

falsely implicated in the case. No witness was examined on behalf of the defence. The learned Sessions Judge, after hearing the arguments of the prosecution and the defence found accused Lila Dhar, Kundan Lal and Bal Kishan (S/o Lachhi Ram) guilty of the offence punishable under Section 396 of I.P.C., and convicted each of them to imprisonment for life. The charge framed against the other seven accused persons namely, Bal Kishan (S/o Uttam Ram), Mohan Ram, Khem Ram, Gopal Ram, Keshar Singh, Bahun Ram and Santosh were not found proved, and accordingly, they were acquitted by the trial court. Aggrieved by the judgment and order of the trial court, convict / appellant Bal Kishan (S/o Lachhi Ram) filed appeal No. 1046 of 1987 (now numbered as Criminal Appeal No. 1276 0f 2001) before the Allahabad High Court along with delay condonation application, where delay in filing the appeal was condoned and the appeal was admitted. Convict / appellants Lila Dhar and Kundan Lal filed their separate appeal No. 1318 of 1986 (now numbered as Criminal Appeal No. 313-A of 2001) before the Allahabad High Court. On the other hand, the complainant also filed Criminal Revision No. 1208 of 1986 (now numbered as 450 of 2001) against acquittal of seven other accused persons. All the three cases are received by transfer from Allahabad High Court to this Court under Section 35 of the U.P. Re-organization Act, 2000, for their disposal.

7) Before further discussions, it is pertinent to mention here, the ante mortem injuries found on the dead body of Beer Ram by P.W. 6, Dr. S.P. Awasthi, who conducted the autopsy on 10.08.1984, at about 10:00 A.M., in the District

Headquarters at Nainital, and prepared the postmortem report (Ext. A –4). The said Medical Officer found following ante mortem injuries on the body of the deceased:

i) ***Contusion 1 cm X 1 cm over right cheek.***

ii) ***Contusion over right side nose 1 cm X 1 cm.***

iii) ***Contusion 3 cm X 1 cm; 2 cm away from outer end of right eyebrow.***

iv) ***Contusion 2 cm X 1 cm over right side face; 2 cm below the right eye.***

v) ***Six lacerated wounds 0.5 cm X 0.5 cm X muscle deep on the right side of face, no tattooing, charring, synging present.***

vi) ***Multiple lacerated wounds 0.5 cm X 0.5 cm in the area extending from the right shoulder of right upper arm, chest right side and right hypo condrium. Some were muscle deep, some piercing in through the cavity. No tattooing, charring or synging. Haematoma in muscle plain present.***

vii) ***Three lacerated wound 0.5 cm X 0.5 cm on the left side of chest in its middle portion cavity deep. No tattooing, charring or synging present.***

viii) ***Contusion 0.5 cm X 1.5 cm over left side of buttock.***

ix) ***Abrasion 3 cm X 1 cm over the posterior sperior ilac spine left side.***

x) ***Abrasion 2 cm X 1 cm over the anterior aspect of right leg on its middle portion.***

In all 13 pellets were found in the dead body during postmortem examination. Some of which were found embedded deep in the vital organs of the dead body. In the opinion of the Medical Officer, who conducted the autopsy,

the cause of death was shock and haemorrhage because of firearm injury on the vital organs viz. heart, lung and liver.

8) P.W. 5, Dr. Navin Jha, medically examined Smt. Reoli Devi (P.W. 1) on 09.08.1984 and prepared injury report (Ext. A –2). He found following injuries on the person of Smt. Reoli Devi:

i) ***A lacerated wound 2 cm X 1.05 cm on the back of left index finger; 1 cm below meta carpo phalyangeal joint.***

ii) ***An oblique lacerated wound 1 cm X 0.5 cm in the back of left plam; 1 cm above the meta carpo phalyangeal joint.***

iii) ***Abrasion 0.5 cm X 0.5 cm on back of left forearm; 4 cm above left writ joint.***

iv) ***An abrasion 4 cm X 3 cm on lateral surface of left upper arm 14 cm below left shoulder joint.***

v) ***An abrasion 4 cm X 3 cm transverse on lateral surface of left upper arm; 12 cm below left shoulder joint.***

vi) ***An abrasion 3 cm X 2 cm on lateral surface of left upper arm; 10 cm below left shoulder joint.***

vii) ***An abrasion 1 cm X 0.05 cm on the back of left shoulder joint.***

viii) ***A bruise 5 cm X 3 cm on back left shoulder joint.***

ix) ***An abrasion 3 cm X 2 cm on back of right forearm; 3 cm below right elbow joint.***

x) ***An abrasion 1 cm X 1 cm on back of right upper arm; 1 cm above the right elbow joint.***

xi) ***An abrasion 6 cm X 2 cm on front of left thigh; 23 cm above the knee joint.***

xii) A bruise 2 cm X 1 cm on front of right thigh; 1 cm above the right knee joint.

Accordingly to the Medical Officer all the injuries sustained by P.W. 1, Smt. Reoli Devi were simple in nature.

9) On the same day i.e. on 09.08.1984, at about 3:50 P.M., the same Medical Officer Dr. Navi Jha (P.W. 5), also examined Smt. Basanti Devi (P.W. 2) and prepared injury report (Ext. A –3). He found following injuries on the person of Smt. Basanti Devi:

i) A bruise 2 cm X 2 cm on forehead; 1 cm above medial end of left eyebrow.

ii) An abrasion 1 cm X 1 cm on lateral surface of left wrist joint.

iii) An abrasion 3 cm X 3 cm on back of neck; 1 cm below the left ear.

iv) ***an abrasion 3 cm X 2 cm on back of neck; 8 cm below the right ear.***

In the opinion of the Medical Officer, all these injuries sustained by P.W. 2, Smt. Basanti Devi were also of simple nature.

10) P.W. 1, Smt. Reoli Devi, sister of the deceased Beer Ram, is one of the injured eyewitnesses. She has stated that on the day of incident, it was between 8:00 and 9:00 P.M., when she was having meals with Basanti Devi (wife of the deceased) in the light of a kerosene lamp, when accused / appellants Kundan Lal, Bal Kishan (S/o Lachhi Ram) and Lila Dhar entered in her house. She further states that accused / appellant Kundan Lal was armed with gun while other two were armed with sticks (Danda). The

witness narrated that she knew the accused / appellants as accused Lila Dhar is son of her sister, accused Kundan Lal is son-in-law of her sister Rukali and accused Bal Kishan (S/o Lachhi Ram) is also son-in-law in distant relation. P.W. 1, Reoli Devi further states that accused Kundan Lal pointing the gun asked where the ‘MAAL’ (valuables) are kept. Kundan Lal (accused / appellant) also enquired about Beer Ram (deceased). On this, the witness states that she shouted. On hearing her shouts, Beer Ram came from his room. Accused persons asked him to handover the valuables, else he would be killed. Beer Ram refused to accept their demand. On this, according to the witness, accused Kundan Lal fired at Beer Ram but it did not hit him as he (Beer Ram) changed his position immediately. Thereafter, according to this witness, accused persons dragged Beer Ram in the courtyard. It was a moon lit night as only two days were left for the day of full moon. Meanwhile, P.W. 1, Reoli Devi along with P.W. 2, Basanti Devi made attempt to snatch the gun from Kundan Lal but both of them were beaten with sticks (Danda) by accused Lila Dhar and Bal Kishan (S/o Lachhi Ram). In the courtyard there were other associates of the accused / appellants also. When Beer Ram did not disclose where the valuables are kept, accused Kundan Lal fired twice at Beer Ram, who fell down and died on the spot, near the door. P.W. 1, Reolo Devi further states that, thereafter, accused Bal Kishan (S/o Lachhi Ram) and accused Kundan Lal dragged Basanti Devi (P.W. 2) inside the house and came out with the box of valuables in their hands. She says

that thereafter she lost consciousness and regained the same next day in the hospital.

11) P.W. 2, Basanti Devi is also an inured eyewitness of the incident, who is widow of Beer Ram (deceased). She has corroborated the prosecution story, narrated by P.W. 1, Reoli Devi, stating that she was having meals with her sister-in-law Reoli Devi (P.W. 1) in the light of a kerosene lamp. This witness also states that first of all, accused / appellant Kundan Lal armed with a gun, entered in the room and he was followed by rest of the two accused / appellants namely, Lila Dhar and Bal Kishan (S/o Lachhi Ram), both armed with sticks (Danda). P.W. 2, Basanti Devi further states that first of all accused Kundan Lal pointing the gun asked about the valuables. He also enquired about Beer Ram (deceased). This witness also states that she shouted on which her husband Beer Ram came from his room. P.W. 2, Basanti Devi further states that accused persons, thereafter, asked Beer Ram to handover the valuables, but her husband refused to oblige. On this accused Kundan Lal fired at Beer Ram, who shifted his position and saved himself, as such, first fire could not hit him. According to this witness, thereafter, accused persons dragged Beer Ram in the courtyard. The witness further corroborates that she along with her sister-in-law Reoli Devi (P.W. 1) made attempt to snatch the gun from the hand of accused Kundan Lal, but accused Bal Kishan and Lila Dhar gave them beating with sticks (Dunda). She further states that 3 –4 other miscreants were also present in the courtyard, but she could not recognize them. P.W. 2, Basanti Devi says that in the courtyard accused Kundan Lal

fired twice at her husband, who fell down near the door, and died. Thereafter, according to this witness, accused Kundan Lal and Bal Kishan took her (Basanti Devi) inside the room and threatened her to kill if the valuable are not handed over to them. Frightened, the witness states that she disclosed the place where jewellery and cash was kept in a box, which was looted by the accused persons. While, leaving the room, according to P.W. 2, Basanti Devi, accused Bal Kishan further snatched her silver necklace (HANSULI / SUTA) from her neck. P.W. 2, Basanti Devi further states that after the accused persons left the place, some villagers namely, Ramesh, Shankar, Mohan and Khushi Ram came in the house and by midnight her son Dharam Pal (P.W. 4), who was working as Pharmacist in Padampur Hospital also reached there. According to this witness, her sister-in-law Reoli Devi (P.W. 1) after the incident, remained unconscious till she was rushed to the Hospital. Next day, the witness says she too got her injuries medically examined. Lastly, the witness states that she identified the silver necklace in the test identification of property conducted by the Sub Divisional Magistrate.

12) P.W. 3, Murlidhar is minor son of the deceased. This witness has also corroborated the prosecution story, as narrated by his mother P.W. 2, Basanti Devi and his aunt (BUA) P.W. 1, Reoli Devi. P.W. 4, Dharam Pal, the major son of the deceased has stated that on 8th August, 1984, at about 10:00 P.M., villagers Mohan Lal, Jai Shankar and Tari Ram came to him and informed him that dacoity was committed in his house. He also got the information that his father has been fired at. According to this witness, on

this, he reached home at about midnight where he found his father dead and others crying. P.W. 4, Dharam Pal further states that next day morning he lodged the First Information Report (Ext. A –1) of the incident with the Patwari.

13) From the eyewitness account given by the witnesses namely, P.W. 1, Reoli Devi, P.W. 2, Basanti Devi, both injured eyewitnesses, and P.W. 3, Murlidhar read with the injury reports as mentioned above, and the postmortem report (Ext. A –4) of the deceased, the prosecution has successfully proved beyond reasonable doubt the commission of dacoity by the accused / appellants, who were known to the eyewitnesses, with their other 3 –4 associates. And while doing so they voluntarily caused death of Beer Ram.

14) Learned counsel for the appellants argued that the trial court has acquitted the other accused persons on the same evidence on which the appellants have been convicted. In this connection, it is argued that the trial court has committed error of law and the appellants should have been given benefit of reasonable doubt. We do not find substance in the argument of the learned counsel for the reason that the three accused / appellants before us are named in the First Information Report (Ext. A –1). The other accused persons were not named. Not only this, P.W. 2, Basanti Devio, widow of the deceased, has named only three accused / appellants namely Kundal Lal, Bal Kishan (S/o Lachhi Ram) and Lila Dhar and she has not named other accused persons in her statement, rather, she has stated that there were 3 –4 other persons also

accompanying the appellants. As such, in our opinion, it cannot be said that the evidence as against the convicted appellants was same to that of the accused acquitted.

15) Next contention advanced on behalf of the appellants before us is that the known relatives could not have committed dacoity in the house of the deceased that too without taking precaution of covering the faces. In our opinion, in the present facts and circumstances of the case this contention has little force. The question of covering the face depends on how dare devil are the miscreants. Apart from this, there appears no motive on the record to falsely implicate one's own relatives by the witnesses of the incident.

16) It is also submitted on behalf of the appellants that the only light in which the appellants were recognized by the eyewitnesses was a kerosene lamp, which was not taken into possession by the Investigating Officer. In our opinion, mere for this mistake on the part of the Investigating Officer, the prosecution story does not become doubtful. There is consistent evidence of the eyewitnesses on the point that P.W. 1, Reoli Devi and P.W. 2, Basanti Devi were having meals in the light of a kerosene lamp when accused / appellants entered in their house to commit the dacoity. Otherwise also, it cannot be believed that the witnesses were having their meals without any light in their room. Apart from this, there was sufficient moon light in the courtyard, as narrated by the injured eyewitnesses P.W. 1, Reoli Devi and P.W. 2, Basanti Devi, where the accused / appellant Kundan Lal

fired at Beer Ram and accused / appellants Lila Dhar and Bal Kishan (S/o Lachhi Ram) gave lathi blows on the person of Reoli Devi and Basanti Devi, in the presence of 3 –4 associates of the appellants.

17) For the reasons, as discussed above, we are in agreement with the trial court that the charge of offence punishable under Section 396 of the I.P.C. is proved beyond reasonable doubt against all the three accused / appellants namely, Bal Kishan (S/o Lachhi Ram), Lila Dhar and Kundan Lal. On examination of the entire evidence on record, we do not see any error of fact or that of law committed by the trial court in acquitting the rest of the accused, who are respondent Nos. 1 to 7 in the Criminal Revision No. 450 of 2001 (old No. 1208 of 1986). The trial court has given detailed reasons as to why it has found the involvement of these respondents, not proved beyond reasonable doubt.

18) Accordingly, both the Criminal Appeals No. 1276 of 2001 (old No. 1046 of 1987) and Criminal Appeal No. 313-A of 2001 (old No. 1318 of 1986) are dismissed. The Criminal Revision No. 450 of 2001 (old No. 1208 of 1986) is also dismissed. The conviction and sentence of accused / appellants namely, Bal Kishan (S/o Lachhi Ram), Lila Dhar and Kundan Lal is maintained. They are on bail. Their bail is cancelled. They shall be immediately taken into custody forthwith by the court concerned to make them serve out the sentence.

(Prafulla C. Pant, J.) (Rajeev Gupta, C.J.)

Dt. July 11, 2006
H. Negi